

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Gerald FOURNAND *et al.*

Serial No.: 10/598,979

Filed: September 15, 2006

For: OPTICAL LENS HOLDER

Group Art Unit: 2837

Examiner: Unknown

Atty. Dkt. No.: ESSR:124US

Confirmation No.: 2813

CERTIFICATE OF FACSIMILE TRANSMISSION
37 C.F.R. § 1.8

I hereby certify that this correspondence is being transmitted to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA, 22313-1450, facsimile number (571) 273-8300 on the date below:

February 19, 2008
Date


Mark B. Wilson

**RESPONSE TO DECISION MAILED FEBRUARY 12, 2008, REGARDING PETITION
TO THE DIRECTOR UNDER 37 C.F.R. 1.181 FILED DECEMBER 11, 2007; AND
RESUBMISSION OF PETITION TO THE DIRECTOR UNDER 37 C.F.R. 1.181**

ATTN: PCT LEGAL AFFAIRS

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Decision mailed February 12, 2008, Applicants respectfully resubmit this petition to the Director under 37 C.F.R. 1.181, together with item (3) set forth in the Decision as having not been submitted, and respectfully request refund of the five-month extension of time fees in the amount of \$2,230.00 paid on December 11, 2007, in connection with the response to the Notification of Insufficient Fees dated May 11, 2007 (the "Notification").

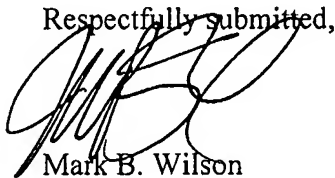
As set forth in Applicants' petition originally filed December 11, 2007, Applicants never received the Notification, as supported by the facts set forth below and as stated in the Declaration of Mark B. Wilson accompanying this Petition, and allege that the Office erred in not mailing the Notification to Applicants' representative.

The non-receipt of the Notification was discovered on November 14, 2007, when support staff in the office of Applicants' representative reviewed the application record of this application in Private PAIR in response to a docketing entry appearing in Applicants' representative's docketing system for "Status Check for First Office Action." At that time, it was discovered that a Notification of Insufficient Fees dated May 11, 2007, appeared in the image file wrapper of this application. Applicants' representative's support staff then reviewed the docketing records for this application and discovered that on May 14, 2007, Applicant's representative received an official Filing Receipt dated May 11, 2007, but did not receive the Notification of Insufficient Fees dated May 11, 2007 (dated the same date as the Filing Receipt, which Applicants' representative did receive). Applicants' representative's docketing staff scans each piece of mail received from the Office as a matter of course, and the scanned images do not contain a copy of the Notification of Insufficient Fees dated May 11, 2007. Applicants' representative's docketing system also does not contain an indication of the receipt of the Notification, as evidenced by the attached copy of the portion of Applicants' representative's printed Docket Report, which is an extract from the firm's master docket database, encompassing July 11, 2007 (which would have been the due date for response to the Notification, had it been received and entered into Applicants' representative's docketing system), showing that there is no entry on July 11, 2007, for Response to Notification of Insufficient Fees for Application No. 10/598,979 (Docket Number ESSR:124US).

Since the basic national stage filing fee and declaration were present on December 15, 2006, the date of entry of this application into the national stage, the only missing requirements to complete the processing of this application were the search fee, examination fee, additional claims fee, and surcharge, which Applicants' representative could have easily supplied within the two-month response period of the Notification, had Applicants' representative actually received the Notification. However, since Applicants' representative did not become aware of the existence of the Notification of Insufficient Fees until the response period was in the fifth month following the initial due date for the response, Applicants were required to pay a five-month extension of time in order to avoid abandonment of the application.

In view of the above, Applicants respectfully submit that the Notification was not mailed to Applicants' representative by the Office and request that the Director refund Applicants' payment of the five-month extension fee in the amount of \$2,230 paid on December 11, 2007, in connection with the Response to Notification of Insufficient Fees filed on that date.

Respectfully submitted,



Mark B. Wilson
Reg. No. 37,259
Attorney for Applicant

(Customer No. 32425)
FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
512.536.3035 (voice)
512.536.4598 (fax)

Date: February 19, 2008

Docket Report

From: 06/29/2007 To: 08/15/2007 For: Wilson Mark B. MW01999

06/29/2007

Due Date	Status	Description	Docket Number	Country	Client	Agent	App No./Date	Reg No. /Date	Attorney(s)
07/10/2007		Request Examination – 1 Mo. Reminder	AO-UTFK:378JP		UNIVERSITY OF TEXAS HEALTH		2001-514927		Mark B. Wilson Monica A. De La Paz Sherry D. Stowers
		Published		Japan	YAMAMOTO		08/10/2000		
		Title/Mark SIGHT	METHOD FOR INCREASING OPTIC NERVES, CHOROIDAL AND RETINAL BLOOD FLOW TO FACILITATE THE PRESERVATION OF						
Event Text:		Agent fax reminder 5/30/07 recommends if any amendments, should do so when req. exam.							
07/10/2007		Expiration	AO-UTSK:090		University of Texas Health Science		07/207,909	4,940,676	Mark B. Wilson David L. Parker Mark B. Wilson
		Issued		United States of America			06/16/1988	07/10/1990	
		Title/Mark expiry	CIP OF 067 - CERAMIC COMPOSITIONS AND METHODS EMPLOYING SAME - EVANS						
Event Text:									
07/11/2007		File References Off Foreign OA in Other Countries	AO-AMBI:098EP		Ambion, Inc.		05760857.2		Mark B. Wilson Mark B. Wilson
		Published		European Patent Office	ET PHELIP		03/18/2005		
		Title/Mark	MODIFIED SURFACES AS SOLID SUPPORTS FOR NUCLEIC ACID PURIFICATION						
07/11/2007		Actual publication date	AO-ASUR:007EP		Asuragen, Inc.		05804851.3		Mark B. Wilson Gina N. Shishima Vannezza J. Villarreal Vannezza J. Villarreal
		Application Filed		European Patent Office	SONN & PARTNER		05/31/2005		
		Title/Mark	METHODS AND COMPOSITIONS INVOLVING MICRORNA						
Event Text:		Advance date from 4/11/07 per VJV docket changes.							

Docket Report

From: 06/29/2007 To: 08/15/2007 For: Wilson Mark B. MW01999

06/29/2007

Due Date	Status	Description	Docket Number	Country	Client	Agent	App No./Date	Reg No. /Date	Attorney(s)
07/11/2007	1 month formal matter-1 month extension		AO-AZTE:015US	Arizona Technology Enterprises, LLC			10/716,293		Mark B. Wilson Mark B. Wilson Patent Prosecution Group
	Application Filed		United States of America				11/17/2003		
	Title/Mark	THERAPEUTIC BIOCONJUGATES							
Event Text:	Corrected Sequence election due								
07/11/2007	Reminder -- Response to OA Due		AO-DFBP:029EP	DFB Pharmaceuticals, Inc.			02749743.7		Mark B. Wilson Michael R. Krawczenek Lori S. Dee
	Published		European Patent Office				07/02/2002		
	Title/Mark	MULTIVESCULAR EMULSION TOPICAL DELIVERY SYSTEM							
Event Text:	re Response due 8/11/07.								
07/11/2007	Status Check		AO-JOJO:002KR	Jones			10-2007-7009233		Mark B. Wilson Mark B. Wilson Lori S. Dee
	Application Filed		Republic of Korea	CENTRAL INTERNATIONAL LAW FIRM			09/23/2005		
	Title/Mark	REMOVING CARBON DIOXIDE FROM WASTE STREAMS THROUGH CO-GENERATION OF SYNTHETIC CARBONATE MINERALS							
Event Text:	Advance date from 6/11/07 per LSD docket changes. Advance date from 6/4/07 per MBW docket changes. Rec'd confirmation from agent that voluntary amendment was filed? (delete claims 41-140). Agent ltr 5/4/07 confirms would file.								
07/11/2007	Status Check for First OA		AO-SONN:081US	SONN & PARTNER			10/556,732		Mark B. Wilson Mark B. Wilson Patent Prosecution Group
	Published		United States of America				05/11/2004		
	Title/Mark	DEVICE FOR DOSING AND MIXING POWDERY MATERIALS							

Docket Report

From: 06/29/2007 To: 08/15/2007 For: Wilson Mark B. MW01999

06/29/2007

Due Date	Status	Description	Docket Number	Country	Client	Agent	App No./Date	Reg No./Date	Attorney(s)
07/11/2007	Notice of Appeal Due		AO-UTSH:251US		UT HEALTH SCIENCE CENT. HOU.		10/021,753		Mark B. Wilson Gina N. Shishima Patent Prosecution Group
	Application Filed			United States of America			10/30/2001		
Title/Mark METHODS AND COMPOSITIONS RELATING TO FORTILIN, AN ANTI-APOPTOTIC MOLECULE, AND MODULATORS OF FORTILIN									
07/12/2007	Notice of Appeal Due - Final Deadline		AO-AMBI:050USC1		Ambion, Inc.		10/354,727		Mark B. Wilson Travis M. Wohlers Patent Prosecution Group
	New case			United States of America			01/30/2003		
Title/Mark METHODS AND REAGENTS FOR PRESERVING RNA IN CELL AND TISSUE S AMPLES									
07/12/2007	FINAL 3 month Office Action-Final Deadline \1		AO-AMBI:050USC1		Ambion, Inc.		10/354,727		Mark B. Wilson Travis M. Wohlers Patent Prosecution Group
	New case			United States of America			01/30/2003		
Title/Mark METHODS AND REAGENTS FOR PRESERVING RNA IN CELL AND TISSUE S AMPLES									
07/12/2007	Request Examination -- 2 Wk. Reminder		AO-AMBI:086JP		Ambion, Inc.		2006-521947		Mark B. Wilson Gina N. Shishima
	Published			Japan	Shimizu, Ph.D.		07/26/2004		
Title/Mark METHODS AND COMPOSITIONS FOR ISOLATING SMALL RNA MOLECULE									
Event Text:	Agent fax reminder rec'd 6/27/07.								
	Agent fax reminder rec'd 4/27/07.								
	SDS email 3/20/07 to client for instr.								
	Agent ltr 2/11/07 rec'd 2/9/07 reminder.								

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February 19, 2008
Date


Mark B. Wilson

DECLARATION OF MARK B WILSON
IN SUPPORT OF RESUBMISSION OF PETITION UNDER 37 C.F.R. § 1.181

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

I, Mark B. Wilson, declare under penalty of perjury that:

1. I have personal knowledge of the facts below.
2. I am a Partner of Fulbright & Jaworski L.L.P., located in the Austin office at 600 Congress Avenue, Suite 2400, Austin, Texas, 78701.
3. I have been registered to practice before the United States Patent and Trademark Office since 1993, under Registration Number 37,259.
4. I am submitting this declaration in support of the concurrently filed Resubmission of Petition under 37 C.F.R. 1.181 (the "Resubmitted Petition") requesting that the Director

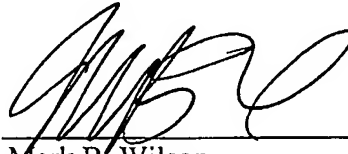
refund the extension fees in the amount of \$2,230.00 submitted with the Response to Notification of Insufficient Fees filed December 11, 2007.

5. I am the attorney who filed this application and am responsible for handling the prosecution of this application.
6. I have reviewed the series of events described in the Petition with the support staff in my office and attest to the accuracy of those events.
7. Our office scans all documents and papers received from the U.S. Patent and Trademark Office into an electronic image file as part of its docketing practice. All such documents are also docketed in the firm's central docketing system and in the responsible attorney's back-up docket.
8. I have reviewed our firm's docketing records for this application and scanned images of mail received from the U.S. Patent and Trademark Office in regard to this application, and attest that our office received the official Filing Receipt for this application dated May 11, 2007, but there are no records that indicate that we received the Notification of Insufficient Fees dated May 11, 2007.
9. I have reviewed a copy of my Docket Report attached to the Resubmitted Petition which encompasses the date for which a response to the Notification of Insufficient Fees dated May 11, 2007, would have been due had it been received – July 11, 2007 – and confirm that our firm's docketing system did not contain an entry on July 11, 2007, for Application No. 10/598,979 (Docket Number ESSR:124US). Had our firm received the Notification of Insufficient Fees mailed May 11, 2007, a docket entry would have appeared on this Docket Report on July 11, 2007, as the due date for response. Note that the portion of the Docket Report that is attached is an extract of the firm's master docketing database, provided to me every two weeks as part of our firm's docketing

procedures, which includes all of the due dates for matters for which I am the responsible attorney for the given period. Since the time of filing of this application, I have always been and continue to be the responsible attorney for this matter; therefore, this particular Docket Report would have contained an entry for July 11, 2007, as the due date for responding to the Notification of Insufficient fees, if that Notification had been received by our offices.

10. To the best of my knowledge after a review of records at our firm, our office never received the Notification of Insufficient Fees dated May 11, 2007. Evidence of receipt of such Notification, if it had been received, would have appeared in the central docketing system of the firm, the attached printed Docket Report, the responsible attorney's back-up docket, and the scanned image file; however, such evidence did not appear in any of these places.
11. All statements made of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued on it.

Signed: _____


Mark B. Wilson
Reg. No. 37,259

Dated: February 19, 2008